

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

JONATHON MORGAN,

Plaintiff,

vs.

DURAN, et al.,

Defendants.

CASE NO. CV-F-02-6316 AWI DLB P

 FURTHER ORDER RE PLAINTIFF'S
MOTION TO COMPEL

[Doc. 63]

Plaintiff is a state prisoner proceeding pro se and in forma pauperis in a civil rights action pursuant to 42 U.S.C. § 1983. Defendants answered the second amended complaint upon which this action proceeds on January 3, 2005 and the Court issued an order opening discovery on January 26, 2005. On April 12, 2005, the Court issued an Order regarding plaintiff's motion to compel production of documents which was filed on March 14, 2005. The Court found that the investigative reports relating to the August 8, 2002 incident were relevant to plaintiff's claims. Because defendants made a privilege claim, the Court ordered defendants to submit the documents to the Court for in camera review. On May 11, 2005, defendants filed a response to the Court's order indicating that they had made a mistake and in fact there were no investigative reports for the August 8, 2002 incident. Plaintiff filed a reply requesting that defendants be sanctioned for withholding documents.

Plaintiff's request for sanctions is denied. The Court must accept defendants' representation that documents responsive to the discovery requests do not exist. Defendants and their counsel are aware

1 of their disclosure obligations in this case and the consequences of failing to comply. There is nothing
2 to suggest that defendants have not been forthcoming in their response to the Court. Plaintiff's motion
3 to compel further production of documents is therefore DENIED as moot.

4
5 IT IS SO ORDERED.

6 **Dated: June 10, 2005**
3b142a

/s/ Dennis L. Beck
UNITED STATES MAGISTRATE JUDGE